common, and an involuntary disability should surely have more effect, if anything, than a voluntary one.

It is probable, however, that when the question arises for decision, the court before which it comes will be less influenced by the strict rules of law than by that deeply-rooted sentiment of the English and American people, that the proper place for a wife is her home among her children.

In those states where married women are authorized by statute to carry on business and bind themselves by their contracts, they may enter into partnerships: *In re Kinkead*, 3 Biss. C. C. 405; *Haight* v. *McVeagh*, 6 Chic. L. News 151; *Newman* v. *Morris*, 52 Miss. 402; *Bitter* v. *Rathman*, 61 N. Y. 512; *Plumer* v. *Lord*, 7 Allen 481; *Lord* v. *Parker*, 3 Id. 127. And where they have power to enter into partnerships after marriage, there can be little doubt that the marriage of a female partner would not dissolve the firm previously entered into, especially where it is provided by statute that marriage shall not operate to transfer the wife's property to her husband.

BENJAMIN F. REX.

St. Louis, Mo.

RECENT ENGLISH DECISIONS.

Court of Appeal.

HERMANN LOOG *v.* BEAN.

An injunction may be granted to restrain oral slanderous statements concerning another's business, and in such case it is not necessary to show actual loss. This jurisdiction, however, should be exercised with great caution.

B. was employed to manage one of L.'s branch offices for the sale of machines, and resided on the premises. He was dismissed by L., and on leaving gave the postmaster directions to forward to his private residence all letters addressed to him at L.'s branch office. He admitted that among the letters so forwarded to him were two which related to L.'s business, and that he did not hand them to L. but returned them to the senders. After his dismissal he went about among the customers making oral statements reflecting on the solvency of L., and advised some of them not to pay L. for machines which had been supplied through himself. L. brought an action to restrain B. from making statements to the customers that L. was about to stop payment or was in difficulties or insolvent, and from in any manner slandering L. or injuring his reputation or business, and from giving notice to the post office to forward to B.'s residence letters addressed to him at L.'s office, and also asking that he might be ordered to withdraw the notice already given to the post office. *Held*, that the injunction ought to be granted.

Held, also that the defendant had no right to give a notice to the post office, the effect of which would be to hand over to him letters of which it was probable that

the greater part related only to L.'s business; and that the case was one in which a mandatory injunction compelling the defendant to withdraw his notice could properly be made, the plaintiff being put under an undertaking only to open the letters at certain specified times, with liberty for the defendant to be present at the opening.

APPEAL from interlocutory injunction.

The plaintiffs were a limited company styled Hermann Loog, Limited, carrying on the business of selling and letting sewing machines. In 1882 the defendant entered their employment as manager of their branch establishment in Portsea, at a salary of 2*l.* per week, the engagement being determinable by a week's notice. The terms of the engagement were defined by an agreement in writing dated the 13th of October 1882, which, *inter alia*, provided that "all letters and correspondence, though addressed to the said E. C. Bean, unless referring to private affairs, shall be deemed to be the property of the company, and may be opened by any director thereof or any person authorized by the company to do so, and possession thereof shall be taken by the company whenever desired by the officers." The defendant was to reside on the company's premises, and accordingly did so, and conducted their business there from the date of the agreement.

The company dismissed the defendant on the 9th of January 1884, giving him a week's salary in lieu of notice, and on the 12th of February they commenced the present action, asking for an account of the defendant's transactions as their agent, and for an injunction in nearly the same terms as their notice of motion subsequently given, viz., that the defendant, his agents or servants might be restrained from stating to the plaintiffs' customers, or any other person or persons, that the plaintiffs were about to stop payment, or were in difficulties or insolvent, or making any statement to the above or the like effect, and from in any manner slandering the plaintiffs or injuring their reputation or business; and also from giving notice to any of the plaintiffs' customers not to pay the plaintiffs any moneys due or owing to the plaintiffs in respect of the hire of machines or otherwise, and from in any manner intermeddling with the plaintiffs' customers or making use of the knowledge or influence he acquired as the plaintiffs' agent, so as to injure the plaintiffs or their business; and also from giving notice to the post office or any other persons requiring the letters addressed to the defendant at the plaintiffs' residence, or their office used by him while he acted as the plaintiffs' agent, to be

re-directed and sent to the defendant, and from in any manner interfering with the plaintiffs' opening and taking possession of such letters other than those relating to the defendant's private affairs; and for an order that the defendant should forthwith withdraw the notice which he had already given to the post office at Portsea, requiring letters to be re-directed as above mentioned, and deliver up to the plaintiffs all letters which had been so re-directed other than those relating to the defendant's private affairs.

As regards the proceedings with the customers, who were chiefly seamstresses or other working people, evidence was given by a number of them showing that the defendant had made such statements as the following, viz.: to one, that the plaintiffs' firm was a swindle, and that he could supply a better machine than the one she had purchased from the plaintiffs; to another, that she need not pay the plaintiffs any of the money remaining due for a machine, as it had been supplied by himself; to another, that he need not pay for a machine till the defendant was settled with in court; to another, that she need not pay the plaintiffs any more money for a machine she had hired to another, that she had better not pay the plaintiffs any more of the instalments on a machine she had bought as they were bankrupt; to another, that a machine she had bought, from the plaintiffs would only last three months longer; to another, that he must not pay anybody but the defendant for a machine he had bought, as it was his property, and that the defendant was going to stop all his customers from paying any money till he got his account against the plaintiffs settled; and several other cases of similar statements were deposed to.

As regarded the second branch of the case, it appeared that the defendant, on leaving the plaintiffs' service, gave notice to the post office at Portsea to forward to him, at his address in the adjoining district of Landport, all letters addressed to him at the company's place of business. The defendant stated by his affidavit that, except in two cases, all the letters which had been re-directed to him in pursuance of the notice, referred only to his private affairs, and that he returned these two to the senders, saying that he was no longer connected with the plaintiffs. He alleged that he was to some extent a partner with the plaintiffs, as he had bought in certain stock for which he had not been paid, and that an arrear of salary was due to him, but these statements were denied by an affidavit of the plaintiffs' manager.

A witness for the plaintiffs' deposed that she had, on the 2d of January 1884, hired a machine from the defendant as manager of the plaintiffs' business, and that on or about the 24th of January, thinking that the defendant was still managing the business, she called on him and asked him to take the machine away. That he called with a man and took it away, and she paid him 7*s.* for the hire. No notice of this was given by the defendant to the plaintiffs till the 21st of February, when he called at their Portsea office and tendered the machine with the 7*s.* This was admitted by the defendant's affidavit. There was also evidence that the defendant had received letters with money inclosures, and had not for some time handed the money to the plaintiffs.

On the 7th of March 1884, the plaintiffs moved for an injunction as above, which was granted. Defendant appealed.

Oswald, for appellant.

Northmore Lawrence, contra.

COTTON, L. J.—This is an appeal from an interlocutory injunction granted by Mr. Justice PEARSON against the defendant, who had formerly been in the employ of the plaintiffs, and whose engagement was put an end to in the beginning of January last. The injunction went to two points: 1st. To restrain the defendant from making certain libellous statements with reference to the trade and business of the plaintiffs. The order has not yet been drawn up; and, therefore, we do not know the exact terms of it, but the endorsement of Mr. *Northmore Lawrence's* brief which has been handed up to us, is, to restrain the defendant, his agents and servants, from stating to the plaintiffs' customers, or to any other person or persons, that the plaintiffs are about to stop payment, or are in difficulties or insolvent, or making any statements to the above or the like effect, and from in any manner slandering the plaintiffs in their business, and also from giving notice to any of the plaintiffs' customers not to pay the plaintiffs any money due or owing to the plaintiffs in respect to the hire of machines or otherwise. The registrar, who is in court, tells me that he thinks the words "or any other person or persons" would not have been in the order if it had been drawn up, because in the registrar's note the only word is "customers." Now with that qualification the order, in my opinion, is clearly right, and it was only because we

thought that Mr. *Lawrence* probably would insist upon the insertion of those words, "or any other person or persons," that we asked him whether he objected to their being struck out. It appears from the evidence that statements such as are prohibited by the order were made by the defendant. Here is a man who had been in the employ of the plaintiffs, making to their customers slanderous statements with regard to the business of the company, and trying to induce the customers not to pay the sums which they owe to the plaintiffs. The court has of late granted injunctions in cases of libel, and why should it not also do so in cases of slander? It is clear that slanderous statements, such as were made to old customers in this case, must have a tendency materially to injure the plaintiffs' business; they are slanders therefore, spoken against their trade. It is not necessary, therefore, in my opinion, to show that loss has actually been incurred in consequence of them. If they are calculated to do injury to the trade the plaintiffs may clearly come to the court. There is, no doubt, more difficulty in granting an injunction as regards spoken words than as regards written statements, because it is difficult to ascertain exactly what is said. But when the defendant is proved to have made certain definite statements, such as are mentioned in the order, in my opinion an injunction is properly granted to prevent his repeating them. The defendant (though no doubt the tongue is an unruly member to govern) must take care that he keeps his tongue in order, and does not allow it to repeat those statements which he is by the injunction restricted from uttering.

Then the second part of the injunction, which is in part manda tory, restrains the defendant from giving instructions to the postmaster as to his letters, and orders him to withdraw a notice that he has already given to the postmaster. Objection is taken to that on the ground that it is a mandatory injunction, and that the defendant had a right to give directions to the postmaster to send his letters to his actual address. I need hardly say anything about the mandatory injunction being granted. This court, when it sees that a wrong is committed, has a right at once to put an end to it, and has no hesitation in doing so by a mandatory injunction, if it is necessary for the purpose. Then as to the merits, undoubtedly a man when he changes his address, has a right to give directions to a postmaster to send on to him his letters, but

that assumes that they are his letters, and what we find here is that the defendant was formerly residing at the plaintiff's office as a servant of the plaintiffs, and a very large proportion of the letters addressed to him were undoubtedly letters relating to the business of the company, though, of course, there might be some letters which would be marked "private." By means of his notice to the postmaster the defendant has got at least some letters which ought to have been treated as the letters of the plaintiffs, and to have been sent on to them. Instead of doing that the defendant has opened them, and not until some time afterwards has he given them to the plaintiffs, or offered to them the money intended for them, which was in the letters. There is also a case where money was paid to the defendant for the hire of a sewing-machine of the plaintiffs, and the machine was returned, and he did not for some considerable time send the money or the sewing-machine to the plaintiffs. The defendant having so acted, the case is, in my opinion, one in which it is the duty of the court to interfere, and to see that he does not, by reason of his having been employed in the plaintiffs' house of business, obtain letters which are intended for them, and really belong to them, but which have come, under his direction given to the postmaster, to his own private residence. Some of them, in consequence of their being forwarded to him at his own house, have admittedly not gone as they ought to have gone, to the address of those persons who had been his employers. I do not rely in any way on the terms of the agreement, because that was an agreement which was to last during the engagement, which engagement has now been put an end to, but we ought, in my opinion, to interfere, and I think the proper order will be to continue the injunction as regards the defendant's notice to the post office, on the condition that the plaintiffs must undertake, in addition to the undertaking they have already given, not to open the letters which are addressed to him at their office, except at two hours in the day—in the morning and afternoon—when the post comes in, and that the defendant shall have liberty, at those hours, to attend there; and also that they must undertake to deliver to him, instead of forwarding to him, any letters which relate to his private business.

Then comes the question of costs. In my opinion the defendant here has failed; and although we have slightly modified the order as it comes before us, yet I think that ought not to prevent the

appellant, who in substance has failed, from paying the costs of the appeal.

BOWEN and FRY, L.L. J., delivered concurring opinions.

In 1860 Sir RICHARD MALINS, V. C., made perpetual an injunction restraining the publication of a notice which alleged falsely that the complainant was a partner in a bankrupt business house; and in the course of his opinion the learned judge said: "In the decision I arrive at I beg to be understood as laying down that this court has jurisdiction to prevent the publication of any letter, advertisement or other document which, if permitted to go on, would have the effect of destroying the property of another person, whether that consists of tangible or intangible property, whether it consists of money or reputation:" *Dixon* v. *Holden*, L. R., 7 Eq. 488. This was certainly a startling doctrine, giving to a court of chancery a new field for the exercise of its remedial powers of injunction. Under the principle enunciated a grocer, who should circulate in print the false statement that he was the only dealer in town who did not put sand in his sugar, could be enjoined from continuing this method of advertising by any one of his honest business rivals; and it would seem to require no stretch of its jurisdiction to give the court power to restrain our supposed lying groceryman from repeating the same statement orally. The vice chancellor has been much criticized by other judges for going too far in his desire to protect intangible property, and it will clearly appear from the cases referred to below that in *Dixon* v. *Holden*, and in other cases as well, he went beyond the verge of the law. Some later English cases, however, aided by the operation of the Judicature Acts, have established beyond question the power of the courts to restrain the publication of a libel which is likely to injure one in his trade, whether the injunction may come directly to specific property or indirectly through damage to his reputation.

In this country, on the other hand, wrongs inflicted by trade-libel do not seem to have received much attention from courts of equity, and the equitable principle now fully developed in England is here hardly out of bud. The English cases have usually grown out of unwarranted threats by owners of patents to sue for infringement, and as the development of inventions and increase of property interests in patent rights have nowhere in the world been greater than in the United States, it may perhaps seem strange that the law referred to should have received so slight a development on this side of the Atlantic. The law protecting the direct infringement of patents has kept pace with their increase, but the jurisdiction of the courts to secure the public against a wrongful use of patent monopolies has progressed hardly at all. Consequently there has arisen a pernicious practice, by which unscrupulous owners of patents of questionable validity are daily extorting money from innocent dealers and working lasting injury to honest manufacturers. The patentee of a blind fastener, for example, sows broadcast his circulars stating that all fasteners sold by the John Smith Manufacturing Co., are made in violation of his rights, and that any one who sells the goods of that company's manufacture is accountable to him as an infringer. These circulars carry the further information that every one who has participated in the sale or use of said goods must, in order to protect himself from suit, pay damages for past infringement and sell only under a license in the future.

This method of business enterprise is

obviously justifiable and even necessary under some circumstances. When one acting with due prudence and sagacity has reason to believe that his patent is valid, he has an undoubted right to warn a supposed infringer that a suit will be brought against him unless he acquiesces in the patentee's claim and pays a royalty for the privilege he is enjoying; and in case of sudden and extensive infringement carried on simultaneously in different sections of the country the demand upon the patentee to use this remedy becomes imperative, particularly in those instances where the patent has already been affirmed by judicial decree. In many cases, however, "the course taken by complainants suggests the charge that they intend to obtain many of the advantages of an injunction by harassing and interfering with the business of a rival, without taking the risk of a direct suit with that rival, when they would be responsible for the consequences of their act." Of course the failure to follow up the warnings of his circular promptly with a suit against some one or more of the infringers, might justly be considered strong evidence that he was acting unfairly or maliciously.

Under the circumstances it has seemed worth the while to examine with some care the English cases before referred to, to see how far the principles which they establish are applicable to cases that may arise in this country, and to inquire what is the American law upon this general subject.

In the year preceding his decision in *Dixon* v. *Holden*, *supra*, Vice-Chancellor MALINS ordered an injunction to issue enjoining the posting of placards which were calculated to intimidate workmen from hiring themselves to the complainants, the ground of the order being that the effect of the placards was to destroy the complainant's property: *Springhead Spinning Co.* v. *Riley*, L. R., 6 Eq. 551.

Chief Justice GRAY, of Massachusetts, speaking in 1872, said the opinions of MALINS in these cases (and also in *Rollins* v. *Hinks*, L. R., 13 Eq. 355), appeared to be "so inconsistent with previous English authorities, and with settled principles, that it would be superfluous to consider whether, upon the facts before him, his decisions can be supported:" *Boston Diatite Co.* v. *Florence*, 114 Mass. 69. The earliest case cited by MALINS in support of his construction of the law, is *Gee* v. *Pritchard*, 2 Swans. 402 (1818), where Lord ELDON prohibited the publication of copies of letters originally written by the complainant to the respondent, and afterwards returned to the writer after copies had secretly been taken. The jurisdiction was put on a right of property in the writer. The reporter's note of this case refers to 4 Burroughs 2331, where counsel speak of two unreported cases in which similar decisions were reached on the same ground. In 2 Brown's Cas. in Parl. 138, one class of injunctions issuing out of Chancery is said to be: "Injunctions for printing unpublished manuscripts without license from the author." The ground of the jurisdiction is not stated. In *Seeley* v. *Fisher*, 11 Sim. 581 (1841), a short case citing no authorities, an injunction was refused because the advertisement complained of did not hold out that the defendants' work contained any matter which was the exclusive property of the plaintiff, although it did contain allegations disparaging the plaintiff's work. Lord Chancellor COTTENHAM said, that though such an allegation might be the subject of an action at law, as being a libel on the plaintiff's edition, it was not a subject of an injunction. The Court of Sessions, in *Fleming* v. *Newton* (four lords dissenting), interdicted the publication of a register containing the names of bankrupts; but the decree was reversed in the House of Lords: *Fleming* v. *Newton*, 1 H. L. Cas. 363. Lord COTTENHAM pointed

out that the question whether the publication of a libel could be restrained was not necessarily involved, because the register was a public record. The case of *Emperor of Austria* v. *Day and Kossuth*, 3 De G., F. & J. 217, is somewhat anomalous, but it is believed that the wrong complained of was a direct injury to property. The defendants, in *Routh* v. *Webster*, 10 Beav. 561, were restrained from saying, in a printed prospectus, that the plaintiff was a trustee of a joint-stock company. No case was cited either by counsel or by the court; nor is the ground of jurisdiction given, but obviously it is that upon which the courts rely in trade-mark cases, viz.: right of property in one's name. A year later a quack doctor flooded the markets with "Sir James Clark's Consumption Pills," and the plaintiff, Dr. Clark (not himself a dealer in pills), complained to the court that the defendant's acts were bringing his professional skill into disrepute: *Clark* v. *Freeman*, 11 Beav. 112. The Master of the Rolls dismissed the bill because the doctor sought merely to stop the publication of a libel.

These are all the English cases upon the question under consideration prior to the decisions of Vice-Chancellor MALINS, above referred to. The path of our inquiry does not lie across the field of trade-mark and copyright cases: in those the equitable jurisdiction has long been settled. In no case, before that of *Springhead Spinning Co.* v. *Riley*, *supra* (1868), do we find any germs of the doctrine that pecuniary damage resulting from a libel affords a ground for the exercise of the remedial powers of injunction: and it is clear that the vice-chancellor's judgments, both in this case and in *Dixon* v. *Holden*, *supra*, were acts of judicial legislation. In the first case he professed to find authority for his position in *Routh* v. *Webster*, *supra*, and in the second, he relied upon the precedent of his own decision thus erroneously founded. Of the subsequent cases, *Mulkern* v. *Ward*, L. R., 13 Eq. 619, is to the effect that the court had jurisdiction to restrain the publication of a libel, though injurious to property, *Dixon* v. *Holden* being commented upon adversely. Then follows an important case that overrules *Dixon* v. *Holden*, and in which CAIRNS, L. C., and JAMES, L. J., criticize MALINS's view of the law severely—the case of *Prudential Assurance Co.* v. *Knott*, 10 Ch. App. 142 (1874). The court was asked to stop the publication of a pamphlet which alleged, in substance, that the plaintiff company was managed with reckless extravagance. An injunction was refused, the decision affirming the doctrine that equity had no jurisdiction to restrain the circulation of a libel.

We come now to the series of cases decided since the passage of the Judicature Act of 1873. It is believed that the provisions of that act will be found to justify an extension of the equitable principle here under discussion beyond the limits imposed by the law as it then was; but curiously enough the process of development seems to have gone on without much reference to the legislative enactment. The first case in the series is that of *Thorley's Cattle Food Co.* v. *Massam*, 6 Ch. Div. 582, on motion, and 14 Ch. Div. 762 (1880). Joseph Thorley had extensively advertised and sold a compound under the name of "Thorley's Food for Cattle." The process of manufacture was not patented and was known not only to Mr. Thorley but also to his brother, who managed the business. After Joseph died the business was continued by the defendant, his executor; but the surviving brother withdrew from the management, organized the plaintiff company, and began the manufacture of the same food compound and under the same name as before. Thereupon the defendant, by circulars cautioned the public against pur-

chasing any "Thorley's Food for Cattle" not made by his establishment, "the proprietors of which were alone posessed of the secret for compounding the famous condiment." The defendants rested their case on *Prudential Assurance Co.* v. *Knott*, *supra*. The Vice Chancellor, MALINS, said he should have no hesitation in stopping the defendant's act except for that case, and he was inclined to agree with a suggestion of the plaintiff's counsel that that case was controlled and superseded by the Judicature Act. But as the point was a new one he preferred to reserve his views until the hearing. When the cause came on for trial he granted the injunction, but did not refer to the effect of the statute; nor was it discussed by any of the judges on appeal, when the decree was affirmed. The opinions by JAMES, BAGGALLY and BRAMWELL are short, and no case is cited in either of them. MALINS cited several cases of law and remarked, "I think these cases establish this—I do not go into the general question of libel—but they have established the doctrine that where one man publishes that which is injurious to another in his trade or business, that publication is actionable; and, being actionable, will be stayed by injunction, because it is a wrong which ought not to be repeated." The judges on appeal apparently go on the same ground. Here, then, we find a doctrine announced confidently and without any apology in direct conflict with *Prudential Assurance Co.* v. *Knott*, 10 Ch. App. 142, and in accord with MALINS's early views, which that case and others had properly repudiated. It is submitted, then, that the doctrine of the Thorley Food case must find its sanction, if at all, in some enlarged jurisdiction given by the Judicature Act. This act (36 & 37 Vict. ch. 66, §16) transferred to the High Court of Justice "the jurisdiction which, at the commencement of this act, was vested in, or capable of being exercised by all or any one or more of the judges in the said courts [all the common law courts] respectively, sitting in court or chambers or elsewhere, when acting as judges or a judge *in pursuance of any statute, law, or custom*, and all powers given to any such court, or to any such judges or judge *by any statute;* and also all ministerial powers, duties and authorities, incident to any and every part of the jurisdiction so transferred." Now, the Common Law Procedure Act of 1854, 17 & 18 Vict. ch. 125 §§79, 81, 82, provided that "in all cases of breach of contract *or other injury*, where the party injured is entitled to maintain and has brought an action, he may * * * claim a writ of injunction against the repetition or continuance of such breach of contract or other injury," etc.; and "in such action judgment may be given that the writ of injunction do or do not issue, as justice may require." [§ 82 allows a plaintiff at any time after the commencement of his action to apply *ex parte* for an injunction.] Nothing could be clearer, it seems to us, than that this provision, operating upon the powers of Chancery through the enactment of 1873, made a distinct addition to the field of equity jurisdiction. The increased power would seem to authorize an injunction whenever such facts are shown as would support an action at law for damages. Whether the courts will give the language of the two statutes taken together such a liberal construction may be doubted, but its scope is clearly sufficient to justify the decision in the Thorley Food case; and it may confidently be asserted that without the helpful interference of these acts that case could not be good law.

In *Day* v. *Browrigg*, 10 Ch. Div. 294 (1878)—a case where MALINS's zeal to afford the injured redress had again carried him beyond the verge of the law—Sir GEORGE JESSEL repudiated a suggestion by counsel that the act gave the court power to *legislate*, and JAMES, L. J., said that the authority given by sub-section

8, § 25, to grant injunctions in all cases in which it shall appear to the court "just or convenient" does not in the least alter the principles on which the court must act. In *Beddow* v. *Beddow*, 9 Ch. Div. 89 (1878) JESSEL remarked: "In my opinion, having regard to the two acts of Parliament, I have unlimited power to grant an injunction where it would be right or just to do so: and what is right or just must be decided, not by the caprice of the judge, but according to sufficient legal reasons or on settled legal principles." See a remark by COLERIDGE, C. J., in *Saxby* v. *Easterbrook*, 3 C. P. Div. 339. In *Hinrichs* v. *Bendes*, (not in the reports, but found in Weekly Notes, January 1878 page 11). JESSEL makes another suggestion as to the effect of the statutes. He ordered the plaintiff's motion to stand over till the hearing, observing that he was not prepared to say that, if under the Judicature Act a party could sustain an action for libel, the court would not at the hearing, while awarding damages for the libel, restrain the continuance of it. FRY, J., interrupting the counsel in *Thomas* v. *Williams*, 14 Ch. Div. 867, said; "In *Beddow* v. *Beddow*, JESSEL, M. R., appears to have thought that the power of granting injunctions has been enlarged by the Judicature Act;" and the counsel replied: "His decision only went to this extent, that the Chancery Division has now the same power of granting injunctions which was given to the Courts of Common Law by § 79 of the Com. Law Proced. Act, 1854." *Hill* v. *Hart Davies*, 21 Ch. Div. 798 (1882), the latest case of any importance, holds that the general doctrine may be applied in favor of a joint stock company as well as an individual, but the Judicature Act is not mentioned.

The writer is aware that Professor Pomeroy's new treatise on Equity Jurisprudence (Vol. III., §1358) contains a statement in conflict with the views above expressed. Referring to some of the recent English cases he says; "This extension of the jurisdiction is not based, as it seems, upon any statutory enlargement of the inherent powers of equity; but is the result of the new system by which the one court is empowered to administer both legal and equitable remedies in any and all actions." But as he does not cite or undertake to discuss the provisions of the Judicature Act above quoted it is perhaps fair to conclude that the statement was made without a careful examination of the effect of that statute. The sentence immediately following the one here quoted from the learned author is: "The American courts seem, thus far, unwilling to follow the example of the recent English decisions, and they decline to extend the jurisdiction so as to restrain such torts as libels on business, slanders of title, and the like." If the writer's views are correct, there is a good reason for this unwillingness of the American Courts.

There is one important qualification to which this liberal doctrine of the English law is subject that has not directly been noticed, viz.: the complainant must show that the injurious act is aimed at him. The mere fact that the repetition of the acts complained of will continue to do him harm will not entitle him to equitable relief: to make his bill good on demurrer he must aver that the defendant is acting maliciously or state facts from which malice may be inferred. This necessary element of the plaintiff's case will be found in all of the cases where an injunction has been granted; and whenever such an inference has not been plain the relief sought has been denied. For example, a defendant who changed the name of his estate (previously called "Ashford Lodge") to "Ashford Villa" and thereby lessened the value of the plaintiff's house, which had been known by that name for forty years, demurred successfully to the bill, because it did not allege that the plaintiff acted maliciously. *Day* v. *Browning*, *supra*. The decision

in this case was given on appeal from a decision by MALINS, who had overruled the demurrer. So, too, in *Halsey* v. *Brotherhood*, 19 Ch. Div. 386 (1881) where for aught that appears in the bill, the defendant in warning people against buying engines of the plaintiff because they infringed the defendant's patent, acted *bona fide*, the language of Lord COLERIDGE was as follows: "A statement made under such circumstances does not give a ground of action merely because it is untrue and injurious; there must be also the element of *mala fides* and a distinct intention to injure the plaintiff apart from the honest defence of the defendant's own property." But a principle that whoever acts with reasonable and probable cause to believe that he is only defending his own property does no legal wrong to the injured party would be enough to support the refusal to grant an injunction; and it is submitted that such a principle, stated in affirmative form, expresses strongly enough the state of mind necessary in the wrongdoer in order to entitle the person wronged to demand protection in a court of equity. The jurisdiction is established in every case where one acts under such circumstances as would enable a reasonably prudent man to foresee disastrous consequences to particular individual or company, provided that he has not probable cause to believe that he is at the same time defending his own legal right.

Following are the chief cases at law on the subject of libel upon trade: *Young* v. *Macrae*, 3 B. & S. 264; *Wren* v. *Weild*, L. R., 4 Q. B. 730; *Steward* v. *Young*, L. R., 5 C. P. 122; *Saxby* v. *Easterbrook*, 3 C. P. Div. 339: *Western Counties Manure Co.* v. *Lawes Chemical Manure Co.*, L. R., 9 Ex. 218; *Riding* v. *Smith*, 1 Ex. Div. 91. The leading case is *Wren* v. *Weild*. It contains some strong expressions with regard to the necessity of showing malice, but it is important to note that the only thing *decided* was that there was no evidence for the jury. A remark by Baron KELLY in *Riding* v. *Smith*, illustrates the liberal tendency of the law, and shows the non-technical nature of the action. "It is of little consequence," he says, "whether the wrong is slander, or whether it is a statement of any other nature calculated prevent persons from resorting to the shop of the plaintiff."

The way now seems clear for saying, confidently, that the English decisions regarding restraints upon trade-libels in cases arising subsequent to that of *Prudential Assurance Co.* v. *Knott* (decided just before the Judicature Act of 1873 went into operation), are not generally applicable to cases of trade-libel in this country. In England, as we have seen, the remedial power of injunction has been made almost, if not quite, coextensive with the right to maintain an action at law; but one needs not to be reminded that, in the absence of special local statutes, the law is otherwise in the United States. The point seems obvious enough, and yet we apprehend that it is a point one may easily overlook when citing English cases for the purpose of guiding our courts in the development of the doctrine under discussion.

What, let us now inquire, is the law where courts are governed solely by the general principles of equity jurisprudence? Prior to the Judicature Act of 1873, *Prudential Assurance Co.* v. *Knott*, *supra*, was the law in England, and the same reasons which supported its doctrines there make it now an authority here. The Supreme Court of Massachusetts cites it with approval in *Boston Diatite Co.* v. *Florence*, 114 Mass. 69, and in *Whitehead* v. *Kitson*, 119 Id. 484. Both of these cases, to be sure, were decided before the act of 1877, which gave the court full chancery powers; but there is no reason to sup-

pose that its jurisdiction was thereby enlarged with respect to the doctrine in question. In New York the law cannot be said to be settled. *The New York Juvenile, &c., Society* v. *Roosevelt*, 7 Daly 188 (1877), follows *Prudential Assurance Co.* v. *Knott*, and *Brandreth* v. *Lance*, 8 Paige 24 (1839), is in accord with the same doctrine. So, too, is the case of *Mauger* v. *Dick*, 55 How. Pr. 132 (1878, Sup. Ct.), which cites with approval the first of the two Massachusetts cases, and SPEIR, J., remarked: "The jurisdiction of a court of equity does not extend to false representations as to the character or quality of the plaintiff's property or to his title thereto, when it involves no breach of trust or contract; nor does it extend to cases of libel or slander."

In *Wolfe* v. *Burke*, 56 N. Y. 115, and *Hovey* v. *Rubber Tip Pencil Co.*, 57 Id. 119 (1874), the facts were such that it was not necessary to pass upon the question, so that the cases are not authorities either way. In the latter the court refused to grant an injunction: first, because the issues presented questions arising under the United States Patent Laws, and hence not within the jurisdiction of the state courts; and second, because the defendant had acted with reasonable fairness in the defence of his supposed rights. The inference that may be drawn from the last ground is not of much consequence, but the case of *Croft* v. *Richardson*, 59 How. Pr. 356, decided in the state Supreme Court in 1880, is unquestionably opposed to the other New York decisions. The defendants were sending threats and warnings to the plaintiff's customers, alleging that a carpet exhibitor made and sold by the plaintiffs was an infringement of the defendant's patent, and that the plaintiffs were intending "to make a considerable profit before legal proceedings put a stop to their nefarious efforts." A motion for an injunction was granted, the judge relying upon the *Thorley Food Case* (then just reported in the Albany Law Journal), and remarking that the language of the circular was too excessive and ill-chosen to convey the simple information that the plaintiffs had no right to make and sell the article of which they claimed to be the patentees. This decision, so far as we have been able to learn, stands alone among the few American cases. Of its authority it may be said, first, that the opinion was not given by a judge of the highest court; and second, that the case upon which it was founded was not (for reasons already given) applicable in the state of New York. *The Celluloid Manuf. Co.* v. *The Goodyear Dental Vulcanite Co.*, 13 Blatch. 375 (Southern Dist. of N. Y.), contains a reference to the earlier English cases, but decides nothing. The only other decisions in the United States that we are aware of are: *Caswell* v. *Central Railroad and Banking Co.*, 50 Ga. 70, and *Life Association of America* v. *Boogher*, 3 Mo. App. 173 (1876), both of which state the law in accordance with the doctrine of the Massachusetts cases. The ground of the decision, however, in the Missouri case is peculiar. To stop the circulation of the printed matter, libellous as it might be, would be to violate the state constitutional provision that "every person may freely speak, write or print on any subject, being responsible for the abuse of that liberty." The responsibility laid in the qualifying clause was held to be only such as the courts may enforce, civilly or criminally, *after* the abuse has occurred. The question would seem to us to have been brought before the Missouri court apart from any consideration of the constitutional provision, and to have raised just the points that are involved in the decision of the main question by any court of general equity jurisdiction; but

the judges in the case chose a short cut to a determination of the matter in the way we have here indicated.

The following, if not an exhaustive list of the classes of cases in which injunctions are granted to prevent the commission of a tort, certainly contains every class in which, by analogy, such cases as we have been considering might fall: waste, trespasses, nuisances, infringement, patents and copyrights, literary property (including works of art), as distinct from copyrightt trade-marks. See Pomeroy, vol. iii., sects. 1346–1358. The principle which will thread them all is, that a court will act in behalf of private as distinguished from public interests only where it may prevent a *direct and immediate* injury to some species of property. The mere analogy of preventing trespassers or any of the wrongs here enumerated, is not enough to warrant an exercise of the jurisdiction. Perhaps a court would be justified in interfering in favor of one injured by false statements persistently made, which lessened the value of his goods by slandering his title to them. The analogy presented by such a case might be sufficiently close to the principle of the cases which received the protecting power of injunction; but the jurisdiction could not be stretched further across never so slight a distinction, without admitting the whole line of cases which come within the scope of the English doctrine.

It is to be regretted that the line is drawn thus sharply, for one may fairly say, the greater protection afforded by the English courts is demanded by a just regard for the vastness and variety of our commercial interests. Our jurisprudence must in some way meet that demand. In course of time the result might slowly be worked out by the judges unaided by assistance from the legislators, but an immediate development reaching to the desired end could not be effected without a palpable violation of judicial functions. Legislation therefore is needed, and needed now. Let the law-makers take the matter in hand, recognising fully the defect of the common-law theory which justifies interference with individual freedom not until after the person has actually committed a wrong, and enact for us statutes which shall embody substantially the provisions of the judicature acts. The ideal remedy," says Professor Pomeroy, "in any perfect system of administering justice would be that which absolutely prevents the commission of a wrong—not that which awards punishment or satisfaction for a wrong after it is committed."

ROBERT P. CLAPP.

Boston.

RECENT AMERICAN DECISIONS.

Supreme Court of Minnesota.

STATE v. STATE MEDICAL EXAMINING BOARD.

The Minnesota stat. of 1883, regulating the practice of medicine, requires, as a condition of the right to practice as a physician (except as to those who have been engaged five years in practice in this state), a certificate of qualification from the faculty of the medical department of the state university. Section 9 of the act authorizes this board to refuse such certificate to those guilty of unprofessional or dishonorable conduct. The relator was refused a certificate upon the ground that, as the board determined, he was guilty of unprofessional and dishonorable conduct.